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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. IAN WESTLEIGH ALLEN, Defendant and Appellant.	G041253 (Super. Ct. No. 06WF2607) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James A. Stotler, Judge. Affirmed.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted Ian Westleigh Allen of first degree murder for slaying his girlfriend's mother, Barbara Mullenix. (Pen. Code, § 187, subd. (a).) In a separate trial, a different jury convicted defendant's girlfriend, Rachel Mullenix, of first degree murder for the matricide.[1] (*People v. Mullenix* (May 12, 2010, G041068) [nonpub. opn.] (*Mullenix*).) Defendant's sole appellate contention is that the trial court erred by allowing the forensic pathologist who performed Barbara's autopsy to testify her bodily wounds were consistent with an assailant straddling her torso while stabbing her with a knife, which made it less likely the same assailant inflicted from that position the knife wounds found on the back of Barbara's legs. Defendant asserts the pathologist based this opinion on common sense and not medical expertise. Defendant asserts that leveraging the authority of an expert opinion on a matter of common sense unfairly enhanced the weight of the evidence, and therefore prejudiced him because it led the jury to infer a second attacker was present to inflict the leg wounds, which conflicted with his defense that Rachel committed the murder alone and he only aided her after the fact. We are not persuaded. Crime scene reconstruction is a proper subject for expert testimony, especially where it depends on an analysis of the nature, depth, and manner and direction of the infliction of wounds to reconstruct body positions. There was no error. We therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

As we detailed in *Mullenix*, "The evidence demonstrated the victim's perceived interference with their relationship prompted both Allen and [Rachel] to slay

[1] Because they share the same last name, we use Barbara's and Rachel's first names for clarity and ease of reference, and intend no disrespect. (See *In re Marriage of Olsen* (1994) 24 Cal.App.4th 1702, 1704, fn. 1.)

her . . . ." (*Mullenix*, *supra*, G041068.) The pair dumped Barbara's body in Newport Harbor with a butter knife embedded under her right eye socket. Investigators determined Barbara had been stabbed more than 50 times with four different knives.

The issue on appeal concerns only the testimony of pathologist Dr. Sean Enloe, who conducted the victim's autopsy. Enloe opined that the location, direction of entry, and other factors related to Barbara's wounds were consistent with her assailant having inflicted many of the wounds while straddling her torso. In addition to Enloe's opinion the attacker straddled the victim, defendant focuses on Enloe's response to a hypothetical question. When the prosecutor asked Enloe, "assuming the assailant is in the same [straddling] position, . . . what can you tell us about the injuries to the [back of the victim's] leg area," Enloe responded, "It would be difficult, but it would still be possible to inflict those types of wounds." Enloe elaborated: "If one is straddling on top of another[,] facing that person's face, to continue to stab and [inflict] those [leg wounds], one has to either twist one's body or stab blindly or reposition one's self, so while staying in that position they are either twisting their whole body or stabbing blindly."

II

DISCUSSION

Defendant argues Enloe's testimony "regarding the victim being straddled and stabbed from the front," therefore "making it difficult" to stab the back of the victim's legs, "was simply not the province of an expert witness." Rather, according to defendant, this opinion "takes no expertise whatsoever." But defendant overlooks the medical analysis, training, and experience involved in reconstructing from a lifeless body a chaotic murder scene. (*People v. Mayfield* (1997) 14 Cal.4th 668, 766 ["A forensic

pathologist who has performed an autopsy is generally permitted to offer an expert opinion not only as to the cause and time of death but also as to circumstances under which the fatal injury could or could not have been inflicted"].) Specifically, Enloe's opinion the attacker may have straddled the victim depended on analyzing wound characteristics to determine the nature of the weapon used and the manner, direction, and force with which the attacker inflicted the wounds. Using these and similar clues to reconstruct the attacker's position is outside the jury's common experience and therefore a proper subject for expert testimony. (*Ibid.*; *People v. Farnam* (2002) 28 Cal.4th 107, 161-163 (*Farnam*); Evid. Code, § 800, subd. (a).)

Defendant complains that even if the assailant's position during the attack may have been a proper subject for expert testimony, the expert's opinion that it would have been difficult for the assailant to stab the victim's legs from that position is based on common sense, not the expertise of the witness. Defendant argues the trial court erred in not preventing Enloe from opining, in response to a hypothetical, that "[i]t would be difficult . . . to inflict those types of wounds" to the back of a victim's legs while straddling the victim. Having failed to object below, however, defendant forfeits his appellate challenge. (Evid. Code, § 353; see *People v. Morris* (1991) 53 Cal.3d 152, 187-188 [requiring party to object to specific evidence "allows the trial judge to consider excluding the evidence or limiting its admission to avoid possible prejudice. It also allows the proponent of the evidence to lay additional foundation, modify the offer of proof, or take other steps designed to minimize the prospect of reversal"], disapproved on another point by *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

Moreover, there was no error in permitting Enloe's testimony. In reconstructing a death scene, specific details in an expert's opinion may appeal to a jury's common sense, but these details as part of the reconstruction as a whole remain a proper subject for expert testimony. (*Farnam, supra*, 28 Cal.4th at pp. 162-163.) Defendant argues that imbuing common sense with the aura of expert opinion prejudiced him in this particular instance because it led the jury to infer, as the prosecutor argued, that a second attacker was present in the room to inflict the leg wounds while the primary attacker straddled the victim. This inference did not derive from any authority in Enloe's testimony, however, because the trial court, at a foundational hearing, expressly forbade him from opining on the presence of a second attacker in the room. Consequently, the defense was free to argue, and did argue, that, consistent with Enloe's straddling opinion, a lone attacker — Rachel — inflicted the wounds on her mother's legs and on the rest of her body, but did not inflict all the wounds from only one position. Under the defense theory, Rachel simply inflicted the leg wounds *before* or *after* holding her mother down in a straddle position, rather than *while* straddling her. Because Enloe's testimony reconstructing a death scene in which the assailant straddled his or her victim was equally consistent with the defense and prosecution theories of the case, we discern no conceivable error or prejudice in admitting the testimony.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

O'LEARY, J.